

Supreme Court of Kentucky


ORDER

**IN RE: ORDER APPROVING THE RULES OF COURT PRACTICE AND
PROCEDURE, DOMESTIC RELATIONS RULES, FOR THE 33RD
JUDICIAL CIRCUIT, PERRY COUNTY**

Upon recommendation of the Circuit Judge of the 33rd Judicial Circuit,
and being otherwise sufficiently advised,

The Rules of Court Practice and Procedure, Domestic Relations Rules, for
the 33rd Judicial Circuit, Perry County, are hereby approved. This order shall
be effective as of the date of this Order, and shall remain in effect until further
orders of this court.

Entered this the 25th day of April 2012.


CHIEF JUSTICE JOHN D. MINTON, JR.

RULES OF COURT
PRACTICE AND PROCEDURE
COMMONWEALTH OF KENTUCKY

DOMESTIC RELATIONS
PERRY CIRCUIT COURT
33rd JUDICIAL CIRCUIT

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RULE 1 INTRODUCTION/ADMINISTRATIVE PROCEDURE

101 Preface

These are the Uniform Rules of Court Practice and Procedures of the 33rd Judicial Circuit, Perry Circuit Court, Domestic Relations Division. These Rules supplement the Kentucky Family Court Rules of Procedure and Practice (FCRPP), the Kentucky Rules of Criminal Procedure (RCr) and the Kentucky Rules of Civil Procedure (CR). These rules shall be the only operative rules in the 33rd Judicial Circuit Perry Circuit Court Domestic Relations Division. All previous Domestic Relations rules adopted by the 33rd Judicial Circuit Perry County are hereby rescinded.

102 Effective Date

The effective date of these rules shall be thirty (30) days after Kentucky Supreme Court approval.

103 Citation

These Rules shall be cited as PCFCR.

104 Qualifications for Domestic Relations Commissioner

There shall be a Part Time Domestic Relations Commissioner for the 33rd Judicial Circuit, Perry County, with the qualifications as stated in FCRPP 4(2), and said Commissioner shall be the Master Commissioner for the county in which he/she resides as authorized by CR 53 and approved by the Chief Justice.

105 Referral of Cases

Unless otherwise ordered by the Court, there shall be a standing referral to the Domestic Relations Commissioner of all domestic relations matters, including, but not limited to the following:

- A. Uncontested and contested matters arising from actions suffering the marital relationship of the parties under KRS Chapter 403;
- B. Child Custody, support and maintenance under KRS Chapter 403, both pendente lite and post judgment;
- C. Costs and attorney's fees in these actions involving subsections A and B;

- D. Show Cause hearings shall be noticed and held before the Judge of the Circuit Court no later than the 2nd regularly scheduled criminal motion hour following the date of the order as tendered by the Clerk. Show Cause motions shall be noticed to be held beginning at 3:00 p.m.
- E. Attorneys shall file exceptions to Domestic Relations Commissioner's Recommendations and notice a status hearing to be held before the Judge of the Circuit Court no later than the 2nd regularly scheduled civil motion hour following the date of the order as tendered by the Clerk.
- F. All Status Quo Motions are to be noticed before the 33rd Judicial Circuit Judge on Thursdays at 3:00 p.m. with notice as required by FCRPP 2(6).

106 Holidays

Holiday schedules may be obtained at the Perry Circuit Clerk's Office.

RULE 2 COURT SCHEDULING/MOTION HOUR / PROCEDURES FOR FILING

201 Regular Motion Hour

- A. Hearings before the Domestic Relations Commissioner shall be on Monday.
- B. Uncontested matters shall be noticed to be heard at 9:00 a.m.
- C. Contested matters shall be initially noticed to be heard at 9:30 a.m.
- D. Hearings which require a day other than a regular motion day, shall be set for a time and date certain before the Domestic Relations Commissioner, which time and date shall be provided by the Commissioner.

202 Exceptions to Regular Motion Hour Schedule

Whenever a state holiday falls on a Monday, or if court is closed for any unforeseen reason, i.e., inclement weather, the motion shall be re-noticed by the moving party.

203 Deadline for Serving and Filing Motions

- A. All motions pursuant to PCFCR 201(A.) shall be filed and clocked no later than 4:00 p.m. on the preceding Monday with copies to be mailed, placed

in the mailbox located outside the Clerk's office at the Hall of Justice, or hand delivered by 4:00 p.m. on the preceding Monday.

- B. The Clerk shall establish a separate Domestic Relations Docket Sheet, which shall not be co-mingled with matters to be heard by the Court. The Clerk will not assign any motion to a docket unless the motion and notice shall have been filed in the Clerk's office no later than 4:00 p.m. on the preceding Monday prior to the date set for hearing.

RULE 3 ADOPTIONS/TERMINATION OF PARENTAL RIGHTS

- A. All petitions for voluntary termination of parental rights shall be heard by the Judge of the Circuit Court.
- B. All motions shall be scheduled before the Court at a regularly scheduled civil motion day at which time the Court will determine if a hearing is necessary and if so schedule the same.
- C. Pursuant to FCRPP 33(1) The State Child Protective Service agency report pursuant to KRS 199.510, and the guardian ad litem report, if any, pursuant to KRS 199.515 shall be filed within sixty (60) days of notice and/or appointment. If not filed within sixty (60) days the responsible agency and/or attorney shall file a motion with the Court to show cause why the report has not been filed.

RULE 4 DOMESTIC VIOLENCE PROTOCOL AND 24 HOUR ACCESS POLICY

401 Procedure for Filing and Obtaining Emergency Protective Orders

- A. During regular office hours Monday - Friday, 8:00 a.m. - 4:00 p.m. a verified petition for a Domestic Violence Order (DVO) and ex parte Emergency Protective Order (EPO) shall be filed with the Perry County District Clerk on the 1st Floor of the Hall of Justice (Judicial Center) at 545 Main Street, Hazard, Kentucky 41701.
- B. Petitions needed at all other times shall be filed pursuant to the TWENTY-FOUR (24) Hour ACCESSIBILITY TO EMERGENCY PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION DOMESTIC VIOLENCE PROTOCOL which is attached as Appendix A and incorporated by reference as if set out in full.

402 Violation of Domestic Violence Orders

- A. Without limiting a party's choice of remedies, alleged violations of Domestic Violence Orders shall be referred to the Perry County District Court for possible prosecution, except as set forth in 402 (B).
- B. Without limiting a party's choice of remedies, alleged violations of Domestic Violence Orders pertaining to visitation, child support, counseling, or firearms provisions should be initiated through the Perry Circuit Court and scheduled for contempt hearing on the first available criminal motion docket.

403 Hearings

The Court will determine the time necessary for a hearing and schedule the same.

RULE 5 DOMESTIC RELATIONS PRACTICE

501 Required Case Information

- A. A Case Data Information sheet shall be filed with the petition (Form AOC-FC-3).
- B. In any divorce action where the parties are ordered to attend a Divorce Education Program, the Perry Circuit Clerk's Office shall provide a copy of the Case Data Information sheet to the Families in Transition Office.

502 Appearances, Waivers, and Agreements

- A. Any unrepresented party who signs and acknowledges an appearance and waiver or agreement shall do so before a notary or deputy clerk.
- B. No entry and appearance shall be signed prior to the filing of the petition.
- C. All Agreements and Agreed Orders shall contain the correct mailing address and/or e-mail addresses for the attorneys and parties.

503 Divorce Education Program (FIT)

Families involved in a divorce proceeding where there are minor children may be ordered to participate in a Divorce Education Program (Families in Transition). A schedule of sessions and brochure shall accompany this notification of requirement to attend.

504 Property Schedules and Case Management Conferences

- A. In any action for dissolution of marriage if any pleadings refer to the existence of marital property or debts incurred during the marriage, the parties shall prepare and file financial disclosure statements in accordance with FCRPP 2(3) and 3(3).
- B. The Clerk upon filing a petition for dissolution of marriage shall docket the case for a case management conference for the first available Monday following 90 days from the date of filing. (See FCRPP 2(6))

505 Uncontested Final Hearings

At the trial of an uncontested proceeding for dissolution of marriage, counsel shall tender the decree which he or she deems appropriate at the conclusion of the hearing.

506 Motions and Hearings

The moving attorney and/or party shall submit a proposed order to the Domestic Relations Commissioner's recommendations within seven (7) calendar days of the hearing unless otherwise directed.

507 Child Support/Maintenance

- A. Once child support has been set by the Court, it shall continue in full force and effect unless modified by the Court.
- B. Pursuant to CR 7.03 in any action where the support and maintenance of children or spousal maintenance is in issue, each party shall file all documents required in FCRPP 5 and FCRPP 9. Parties shall comply with CR 7.03 (1) (b) by filing one copy from which any personal data has been redacted and filing an unredacted copy in a marked and sealed envelope. The Clerk of the Court shall allow the unredacted sealed copy of the pleading, document or exhibit containing personal identification to be accessed only by a party to the case, an attorney or record in a case, the domestic relations commissioner, a judge in the court or other authorized court personnel, a duly authorized employee or agent of the Cabinet for Health and Family Services involved in child support matters attendant to the case, or a person authorized to view the copy by specific orders of the Court. As used in the section, "personal identifiers" means Social Security number or taxpayer identification number, or financial account number.
- C. All proceedings related to child support shall be governed by FCRPP 9.

508 Visitation

A parent shall be entitled to time-sharing/visitation as ordered by the Court. The Court shall set time-sharing/visitation as the Court deems appropriate based on each family's situation and need which may be in accordance with the Standard Time-Sharing/Visitation Guidelines, Appendix B, unless otherwise agreed by the parties or ordered by the Court.

509 Decrees, Rules and/or Orders

All Decrees, Rules and all Orders to be entered shall be signed by the Circuit Judge. In all matters that have been heard by the Domestic Relations Commissioner in which a recommendation has been made, the Decree, Rule or Order shall contain the following notation along the left hand margin:

Recommended on the _____ day of _____, _____

By: _____
Domestic Relations Commissioner

510 Mediation

A. Mediation

If ordered by the court pursuant to FCRPP 2(6), the parties shall engage in mediation unless the exceptions provided under KRS 403.036 apply.

B. Requirements for Property Mediation

The parties shall exchange and provide to the mediator, in no less than five (5) working days prior to the mediation conference, the following:

1. Supplement to financial disclosure statement regarding any material change.
2. A short statement including definition of the issue to be addressed by the mediator and a brief narrative statement of any special problems affecting the case (e.g. closely held corporation, medical problems of any family member, etc).
 - a. Copies of any documents supporting valuation of assets;
 - b. Copies of all documents verifying monthly payments and outstanding balances on all debts; and
 - c. All information and copies of all documents requested by the

mediator prior to the mediation conference.

C. Counsel

The parties shall attend the mediation conference and shall appear promptly at the time and location for the scheduled mediation conference. The attorneys for each party may attend and participate, subject to the defined roles of the mediator, and shall at all times be permitted to privately communicate with the respective clients.

D. Completion of Mediation

1. At the conclusion of mediation, the mediator shall report without comment to the Court as to the outcome of the mediation, (i.e. a full agreement, partial agreement or mediation terminated). A termination or non-agreement shall be without prejudice to either party.
 - a. Handwritten or recorded mediation agreements must be typed and signed by all parties and their counsel, if any, within ten (10) working days.
2. The Court shall retain final authority to accept, modify, or reject an agreement.
3. The parties shall have the affirmative duty to contact the court's secretary and remove any pending hearings concerning resolved issues.

E. Confidentiality

Mediation proceedings shall be held in private and all communications, verbal or written, made in the proceedings shall be confidential.

RULE 6 MISCELLANEOUS RULES RELATING TO FAMILY LAW PRACTICE

601 Identification of Counsel or Party Required

Every pleading, motion and any other paper filed in the record by counsel or party shall contain the case number, typed or printed name, address, telephone number and e-mail address of the attorney or party signing the paper. A rubber stamp shall not be deemed a signature either under this Rule or CR 11.

602 Protection of Personal Identifiers

- A. The Family Court Case Data Sheet must be fully completed in all cases. In addition, all pleadings must comply with the requirements of KRS Chapters 205, 403, 405, 406 and 407 by providing the personal identifying information required in those chapters. However, except as set forth in paragraph B below, where personal identifiers are required by statute or contained in other documents or exhibits filed with the court pursuant to the above-stated chapters, parties shall comply with CR 7.03(1)(b) by filing one copy from which any personal data has been redacted and filing an unredacted copy in a marked and sealed envelope. The clerk of the court shall allow the unredacted sealed copy of the pleading, document, or exhibit containing personal identifiers to be accessed only by a party to the case, an attorney of record in the case, a judge of the court or other authorized court personnel, a duly authorized employee or agent of the Cabinet for Health and Family Services involved in child support matters attendant to the case, or a person authorized to view the copy by specific orders of the court.

As used in this section, "personal identifier" means a Social Security number or taxpayer identification number, date of birth or financial account number.

- B. Pleadings, documents, or exhibits filed in actions deemed confidential by statute need not be redacted, and any access to those files shall be governed by KRS 199.570, KRS 610.340, KRS 625.045 and KRS 625.108.

603 Notice of Submission

In accordance with SCR 1.050(8), when any action stands submitted for final adjudication, counsel or unrepresented parties shall file an AOC Form 280 with the Judge, Family Court Clerk and Administrative Office of the Courts.

604 Video Copies of In-Chamber Interviews with Children

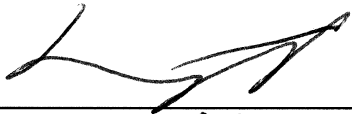
Pursuant to FCRPP 17, the Perry County Circuit Court Clerk's Office shall not release any interviews with children without a specific written order of the Court. An individual requesting a judicial order must provide the Judge a written explanation for the request which specifically indicates the portion of the interview record being requested is an in-chamber interview with a child and specific purpose for the request.

605 Requests for Confidential Video Records

The Perry County Circuit Court Clerk's Office shall not release any copies of Court confidential video records without a specific written order from the Court. An individual requesting a judicial order must file a written motion, with notice to all parties, including the child's Guardian ad Litem, if any, and set forth the purpose for the request.

Except that, pursuant to KRS 610.340(2), this shall not apply to public officers or employees engaged in the investigation and prosecution of cases under KRS Chapters 600 through 645 or other prosecutions authorized by the Kentucky Revised Statutes, as certified by that public officer or employee. Said public officer or employee shall use and distribute this information only for investigation or prosecution of offenses under the Kentucky Revised Statutes.

APPROVED this the 3 day of April, 2012.



Judge William Engle ~~is~~ Circuit Judge
33rd Judicial Circuit

APPENDIX A

TWENTY-FOUR (24) HOUR ACCESSIBILITY TO EMERGENCY PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION DOMESTIC VIOLATION PROTOCOL 33RD JUDICIAL CIRCUIT AND DISTRICT PERRY COUNTY/COUNTIES

Pursuant to KRS 403.735, and in compliance with Family Court Rules of Procedure and Practice (FCRPP) Section IV, this local domestic violence protocol is established to ensure twenty-four (24) hour accessibility to emergency protective orders and to establish written procedures for domestic violence matters in which there may be joint jurisdiction between the circuit/family and district courts.

I. Uniform Protocol for Handling Cases

- A. Circuit court clerk shall process domestic violence cases in accordance with the procedures set forth in the Kentucky Circuit Court Clerk's Manual.
- B. All cases will be assigned a "D" case number with the appropriate trailer number within the court case management system and may not be consolidated with any other case type.
- C. Domestic violence matters may be reassigned from the district court division to circuit/family court when there is a dissolution/custody proceeding pending.
- D. No county shall adopt a blanket "no-drop" policy. Domestic violence cases are civil matters within the purview of CR 41.01.
- E. Domestic violence cases shall be reassigned or transferred to another circuit when there is a dissolution/custody proceeding pending in another circuit. [Consistent with FCRPP 12, when the local domestic violence protocol requires that a case be transferred to another circuit due to a pending dissolution or custody matter, an emergency protective order shall continue and the summons shall be reissued by the initiating court, pursuant to KRS 403.740(4), for a period not to exceed fourteen (14) days if service has not been made on the adverse party by the date of transfer, or as the court determines is necessary for the protection of the petitioner. Thereafter, reissuance of the summons shall occur as needed in the court of transfer.]

II.

Twenty-four Hour Accessibility

A. The following agencies and officers are authorized to take domestic violence petitions and administer oaths to petitioner **during** regular business hours: During office hours, domestic violence petitions shall be available at the Perry Circuit and District Clerk's office and domestic violence petitions shall be verified by the clerk or any deputy clerk.

B. The following agencies and officers are authorized to take domestic violence petitions and administer oaths to petitioner **after** regular business hours and weekends: After hours and holidays, any person may obtain a domestic violence petition at the Hazard City Police Department, Perry County Sheriff's Office, or Kentucky State Police Post 13. After the domestic violence petition has been completed by the person requesting relief, the commonwealth attorney or assistant commonwealth attorney, or any law enforcement officer or dispatcher for a law enforcement agency may verify the petition.

C. Upon receipt of a petition **during** regular business hours, the authorized agency/officer shall present the petition to the following: The domestic violence petition shall be delivered to the district judge or trial commissioner for consideration. If neither is available, then the petition shall be delivered to the Circuit Judge for consideration.

D. Upon receipt of a petition **after** regular business hours, the authorized agency/officer shall present the petition to: The domestic violence petition shall be delivered to the district judge or trial commissioner for consideration. If neither is available, then the petition shall be delivered to the Circuit Judge for consideration.

E. Petitions will be reviewed within an hour of presentation to a judge or trial commissioner unless it is impossible due to the unavailability of a judge or trial commissioner.

F. The schedule for domestic violence hearings is as follows: Perry Circuit Court hearings shall be held each Thursday at 3:00 p.m. Perry District Court hearings shall be held each Thursday at 10:00 a.m.

III. Contempt Proceedings

A. Pursuant to KRS 403.760 civil and criminal proceedings for violation of a protective order for the same violation of a protective order shall be mutually exclusive.

B. Petitioners seeking to initiate contempt proceedings should contact:
Any clerk or deputy clerk in the Perry Circuit and District clerk's office.

C. No petitioner may be held in contempt for failing to appear at a
domestic violence hearing or to prosecute a criminal violation of a
protective order.

All general orders, forms, policies and procedures relating to domestic violence within
the judicial circuit are attached to this protocol and incorporated by reference.

The above protocol is adopted by all judges in the circuit/district.



WILLIAM ENGLE, III
PERRY CIRCUIT JUDGE

4/2/12

Date



LEIGH ANNE STEPHENS
PERRY DISTRICT JUDGE

4/3/12

Date

APPENDIX B

STANDARD TIME-SHARING/VISITATION GUIDELINES

The following schedules are suggested as guidelines for the parents and the Court in establishing time-sharing/visitation schedules. Each case will present unique facts or circumstances which shall be considered by the Court in establishing a time-sharing/visitation schedule and the final schedule established by the Court or agreed to by the parties may or may not be what these guidelines suggest.

1. The time-sharing/visitation schedule set by the Court for holidays, school breaks and summer break should control over regularly scheduled time-sharing/visitation time, even if this allows successive time-sharing/visitation periods.
2. The parent exercising time-sharing/visitation should be responsible for timely picking up the child(ren) at the beginning of the time-sharing/visitation period and returning the child(ren) in a timely manner at the end of the time-sharing/visitation period.
3. Times in the time-sharing/visitation schedule should be set in the time zone where the child primarily resides.
4. For time-sharing/visitation times pertaining to school holidays, whether in a formal school or home-schooled, the school holidays where the child(ren) primarily resides should apply.
5. Each parent should provide to the other parent contact numbers and addresses (unless a domestic violence order is in effect) where the child(ren) can be located during their scheduled time-sharing/visitation time.
6. The parent exercising time-sharing/visitation should be given a minimum of every other weekend as time-sharing/visitation time with the child(ren) and one midweek overnight time-sharing/visitation. The parent having such time-sharing/visitation should be responsible for delivering the child(ren) to school, child care, or the other parent's home as specifically ordered by the Court or agreed to by the parents.
7. Holidays.
 - a. If a holiday is celebrated on a Monday following a parent's regularly scheduled time-sharing/visitation, then that parent should be permitted to extend parenting time until 6:00 p.m. on the holiday, unless the parents agree otherwise.
 - b. Other holidays.
 - i. Parent exercising time-sharing/visitation.
 - 1) During the first full year after divorce/custody proceedings have been filed, the non-residential

parent should have time-sharing/visitation scheduled as follows:

- a) New Year's Day and July 4th from 8:00 a.m. until 6:00 p.m.
 - b) Thanksgiving beginning at 6:00 p.m. the day school ends until 3:00 p.m. Thanksgiving Day.
 - c) Christmas/Winter Break, beginning at 6:00 p.m. the day school ends until noon on December 25.
 - d) Holidays not listed that are of special interest to the family should be assigned to the non-residential parent in time amounts similar to those in a), b) and c) above.
- 2) Holiday time not scheduled above to the parent exercising time-sharing/visitation should be with the other parent.
 - 3) Mother's Day and Father's Day, regardless of any conflict with the above proposed schedule, should be spent with the appropriate parent from 8:00 a.m. to 6:00 p.m.
 - 4) Fall Break or Spring Break, as allowed by the child(ren)'s school calendar, should be scheduled for the parent with whom the child(ren) primarily resides in the first full year after the divorce/custody proceedings are filed from 6:00 p.m. the day school ends until 6:00 p.m. the following Friday. If school breaks are longer than one week due to the school schedule, the parent with whom the child(ren) primarily resides should be scheduled for the first half of the break and the other parent should be scheduled for the last half.
 - 5) Summer Break should be scheduled to allow the parent exercising time-sharing/visitation a minimum of two periods of two consecutive weeks during the Summer Break. Each parent should provide the time periods he or she desires to the other parent before

the end of the school year, or at least 60 days in advance of the requested time. If a child(ren) must attend summer school in order to pass to the next grade, summer time-sharing/visitation should not prevent school time.

- 6) Birthdays: Unless the birthday falls on a regularly scheduled time-sharing/visitation day, the parent exercising time-sharing/visitation should be scheduled for birthday time from 5:00 p.m. until 8:00 p.m. If it is a regular day of the parent exercising time-sharing/visitation where the child(ren) does not primarily reside, the other parent should have birthday time from 5:00 p.m. to 8:00 p.m.

- ii. Alternating years: For each year thereafter, the time-sharing/visitation set out above should alternate between the parents with whom the child(ren) primarily resides and the parent exercising time-sharing/visitation.

8. Waiting/Tardiness/Cancellations.

- a. In the event either parent will be more than 30 minutes late, due to reasonable unforeseen circumstances, to pick up the child(ren), he or she should provide direct notice to the other parent or a designated third party and make suitable arrangements for exchange of the child(ren).
- b. If time-sharing/visitation is missed through no fault of the parent, and reasonable notice has been given, that time should be made up, if reasonable to do so.
- c. If the child(ren) is ill, the parent who has the child should give 24-hour notice, if possible, to allow for appropriate plans to be made.

9. Transportation: The parents should transport the child(ren) in a safe manner, which includes utilizing the appropriate child restraint systems and not driving under the influence of intoxicants.